

Testimony of Brittny Saunders
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Before the Committee on Civil Rights
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Good morning Public Advocate James, Chairperson Mealy and Members of the Civil Rights Committee. My name is Brittny Saunders, and I am Deputy Commissioner for Strategic Initiatives at the City Commission on Human Rights. It is my pleasure to join you this morning to testify in support of Intro 1253, which would amend the City's administrative code to prohibit an employer from inquiring about or relying on a prospective employee's salary history when determining the salary to be offered to that individual. It builds upon Executive Order 21, signed by the Mayor with the support of the Public Advocate last month, which implements similar protections for applicants to City jobs.

At the Commission, our focus is on ensuring fairness through vigorous enforcement of the Human Rights Law and widespread efforts to educate New Yorkers about its protections. Over the course of the last year, we have continued to deliver on Commissioner Malalis' commitment to make the Commission a more energetic, transparent and effective institution. This year saw the expansion of the Human Rights Law to establish protections for caregivers in the workplace. The Mayor also signed Executive Order 16, requiring that all agencies be trained about the right of all New Yorkers to access the single-sex facilities that correspond to their gender identity and that information about these rights be posted publicly. This was followed by the Commission's highly successful "Look Past Pink and Blue" campaign, a public education effort affirming this right that garnered over 62 million impressions across various media platforms. The Commission also issued new legal enforcement guidance concerning the treatment of pregnant workers and became the first anti-discrimination agency in the nation to issue U and T visa certifications. In early fall 2016, with Islamophobic rhetoric and incidents trending upward, the Commission released its "I Am Muslim NYC" campaign. And now, as bias-based incidents have become increasingly common and New Yorkers have become more concerned about the impact of new leadership at the federal level, the Commission is responding in kind, ramping up address and documents reports of intimidation and harassment, focusing workshops and trainings on topics like xenophobia, convening and participating in community forums and more. Our efforts have resulted in over 228 million impressions across print and social media platforms. We are committed to building upon these efforts in the months and years to come.

Local efforts to promote racial and gender equity will only increase in importance in the coming years. Intro 1253 represents an important step forward for women, people of color and others in New York City whose lives are deeply affected each day by pay inequity. The ability to pay for housing, health care, educational opportunities, and the multitude of other costs associated with caring for oneself and one's loved ones is made that much harder when a history of lower pay limits what one is able to demand and earn.

While we as a nation identified the wage gap decades ago and have made some progress in narrowing gaps, disparities still persist. According to the Pew Research Center, among full- and part-time workers nationally, African Americans' median hourly earnings were just 75% that of whites. Women as a whole earned just 83% of what men earned, and among women across all races and ethnicities, hourly earnings trail those of white men as well as men in their own racial or ethnic groups. Progress in closing wage gaps has been uneven across groups.¹ Between 1980 and 2015, the gap in median hourly earnings between white women and white men closed by 22 cents, bringing relative earnings to 82 cents on the dollar. The gap between Asian women and white men narrowed by a similar amount, with Asian women earning 87 cents on the dollar in 2015. In the same period, however, the gap between African-American women and white men narrowed by only 9 cents, bringing their relative earnings to just 65 cents on the dollar. Similarly, the gap between Latina women and white men, narrowed by only 5 cents during the 35-year period, with relative earnings of only 58 cents on the dollar last year.² In New York State, similar trends hold. According to the National Women's Law Center, women as a whole make 88.7 cents for every dollar a man makes. For every dollar a white man makes, an African-American woman makes just over 66 cents, a Latina makes 55.5 cents, an Asian woman makes just over 80 cents and a Native American woman makes just under 61 cents.³

The New York City Human Rights Law has long prohibited discrimination in employment, which includes differential treatment in pay, benefits, and other terms and conditions of employment based on race, gender, national origin, disability, sexual orientation, gender identity, and many other categories. This type of discrimination, however, is difficult to detect, as employees are hesitant to share information about their salaries with colleagues and often don't realize they are being compensated at lower rates for comparable work. Recognizing this reality, local and state governments are taking further steps to encourage pay equity through creative policy initiatives. This summer, for example, the State of Massachusetts, enacted legislation including a prohibition on inquiries regarding previous salary. And this fall, with the support of Public Advocate James, the Mayor signed Executive Order 21, barring the City of New York from inquiring into an applicant's salary history, except under narrow circumstances, and prohibiting the City from relying on salary history in any case. At the signing, the Mayor also expressed his support for Intro 1253. In doing so, the administration has demonstrated its ongoing commitment to gender and racial equity.

The legislation the Committee is discussing today builds upon that commitment, expanding similar prohibitions to employers beyond the City itself. Intro 1253, as currently drafted, would prohibit an employer from inquiring about an applicant's salary history, including important and often overlooked fringe benefits. The employer may not rely on the salary history to determine the salary amount, unless the individual in question volunteers that information. Importantly,

¹ See Pew Research Center, "Racial, gender wage gaps persist in U.S. despite some progress," (Jul. 1 2016), available at <http://www.pewresearch.org/fact-tank/2016/07/01/racial-gender-wage-gaps-persist-in-u-s-despite-some-progress/>

² See *id.*

³ National Women's Law Center, "The Wage Gap, State by State," available at <https://nwlc.org/resources/wage-gap-state-state/>.

however, nothing in the legislation would prohibit an employer from inquiring about or relying on an individual's salary *requirements*. Rather, in the absence of salary history, these demands—likely premised on an applicant's assessment of competitive market rates for similar positions and his or her own experiences in the market—in combination with the employer's assessment of what the role merits and what it can afford to pay would form the basis for salary negotiations. Salary inquiry policies like the one contemplated by the Council simply remove salary histories—which do not necessarily correspond to skill and experience but rather often reflect deep-seated patterns of unequal treatment in the labor market—from the equation. Such legislation has the potential to bolster the efforts of women, people of color, and others who may be burdened with a history of low pay to more effectively negotiate for compensation that matches their skills and abilities. It will allow New Yorkers to market their skills without previous low compensation artificially limiting their prospects. While the administration wholeheartedly supports the goals of the legislation, it also looks forward to working with the Council to further refine the bill. For example, as currently drafted, a prospective employer could contact a previous employer to gather information about prior salary in order to inform an offer, as long as the employer did not consult the applicant herself or publicly available records. This seems inconsistent with the Council's policy goals and should be addressed. In addition, there may be other improvements that might be identified through future conversations with stakeholders.

Again, we are eager to partner with the Council on this legislation and on further efforts to promote gender and racial equity in the City. Now, more than ever, it is essential that we continue to work on these issues on behalf of New York City residents.